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IN THE

Supreme Court of the United States

October Term, 1974.

No. 74-1272.

LOCAL 542, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Petitioner,

v.

THE HONORABLE A. LEON HIGGINBOTHAM, JR., Judge of the United States District Court for the Eastern District of Pennsylvania,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITIONER'S RESPONSE TO OPPOSITION.

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The Petition for Certiorari states in the clearest terms that the Trial Judge should have disqualified himself because, in his public address, he showed an active personal participation in the advancement of all civil rights cases to the extent of going even beyond the legal process in achieving a successful result. Solely this, the Petition states, was the basis for the disqualification effort on the ground of bias and prejudice. Notwithstanding this specificity, the brief in opposition to the Petition alleges that the Petition is predicated on three factors: 1. that the respondent is black; 2. that he addressed a meeting of the Association for the Study of Afro-American Life and History; and 3. that the contents of the address revealed an "attachment" to the black civil rights movement. The plaintiffs thus utterly failed to meet the challenge of the Petition.

First of all, the motion for disqualification does not even allege that the Trial Judge is black, nor does it use any expression which directly or inferentially indicates that the Trial Judge is black, or that this was a factor in the disqualification effort. Second, there is absolutely no criticism of the Trial Judge for his addressing the Association; this was not an issue in the case, and this contention could not be based on our Petition. Third, the statement that the contents of his address revealed an "attachment" to the black civil rights movement is again a complete misnomer. The motion for disqualification does not rely on the fact that there was merely an attachment between the Trial Judge and the black civil rights movement. On the contrary, it expressly relies on the fact that he was an active participant, to the point of prejudice and bias to the defendant who filed this Petition for Certiorari.* Accord-

* Another misleading expression in the plaintiffs' answer to the Petition is the footnote on page 8 in which they state, "It is interesting to note that the other defendants to this litigation, who had initially joined with Local 542 in its recusal petition, have now declined to press on with this continued attempt to remove Judge Higginbotham from the case." This is likewise absolutely untrue. Counsel for the other defendants has not declined to file a Petition, but is relying on the Petition which we have filed.

ingly, it is clear that the real basis for the Petition remains unchallenged on the law and on the statements of fact.

It may be noted also that the answer to the Petition follows the opinion of the Trial Judge, which, as we have pointed out, is completely irrelevant to the issues raised in the motion for disqualification.

Every lawyer is bound to express his proper comments regarding a judge or the activities of any judge. If he fails to do so, he is guilty of prejudicial neglect. We have abided by that principle to the fullest extent. It is our opinion that the expressions made by the judge gave a serious basis for the defendant's fear of bias and prejudice at the trial, as discussed many times by this Court. It is the obligation of counsel to raise this basis for disqualification when and where it appears.

The matter is properly and legally before this Court.

It is respectfully submitted that the Petition for Certiorari should be granted.

Respectfully submitted,

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